FRANK ALLISON

IBLA 71-154 Decided October 8, 1971
71-155

Administrative Practice--Applications and Entries: Generally--Attorneys--Mineral Lands: Generally--Mineral Lands--Prospecting Permits--Mineral Leasing Act: Generally--Regulations: Generally--Regulations--Applicability

> Where an applicant for a prospecting permit does not personally submit a statement of citizenship and acreage holdings in his own name, his power of attorney must specifically authorize and empower his attorney-in-fact to make such statement or to execute all statements which may be required under the regulations.

Administrative Practice--Applications and Entries: Generally--Regulations: Generally--Regulations: Applicability

> A departmental regulation promulgated pursuant to statutory authority has the force and effect of law. An application which does not comply with the clear and unequivocal requirements of the regulations must be rejected.

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IBLA 71-154 : 71-155		New Mexico 12784 and 12795
	:	Sulphur prospecting permit
FRANK ALLISON	:	application rejected
	:	Affirmed

DECISION

Frank Allison has appealed from two decisions of the Santa Fe, New Mexico land office, NM 12784 and NM 12795, wherein his applications for sulphur prospecting permits were rejected because he made no statement of his own concerning his citizenship and acreage holdings, and his power of attorney accompanying the application was deficient in that it did not specifically authorize and empower his attorney-in-fact, as required by the regulations, to make or execute statements as to his citizenship and acreage holdings. Since the facts, issues, and reasons for appeal are the same in each case, the cases will be consolidated for purposes of this appeal.

Both of the applications were filed simultaneously with five other applications on December 1, 1970. Allison's applications were accorded number 1 and number 2 priority respectively in a public drawing. The applications were signed by Allison's attorney-in-fact, Don Buckalew, who also answered the questions in the application concerning the applicant's citizenship and acreage holdings. No separate statements were made by Allison.

The regulations require every applicant for a permit to show that his interest does not exceed the acreage limitation and that he is a citizen. 43 CFR 3502.1 (1971); 43 CFR 3502.2-1 (1971). Provisions are made for applications to be signed by the applicant or his attorney-in-fact. 43 CFR 3502.6-1(a) (1971) provides that:

> All applications must be signed by the applicant or his attorney-in-fact, and if executed by an attorney-in-fact must be accompanied by the power of attorney and the applicant's own statement as to

> his citizenship and acreage holdings unless the power of attorney specifically authorized and empowers the attorney-in-fact to make such statement or to execute all statements which may be required under these regulations. (Emphasis added)

If an attorney-in-fact signs an application which does not comply with the above cited regulations, it will be rejected. 43 CFR 3511.2-4(a)(4) (1971).

Because the appellant's power of attorney was very broad and comprehensive in that it vested in his attorney-in-fact "full and universal power of attorney" and gave and granted him ". . . power to do any and every act and exercise any and every power," the appellant argues that the power of attorney was sufficient to grant the attorney-in-fact authority to properly file his applications. Stating the general rule that there is no room for construction of a power of attorney when its import is clear, the appellant asserts that it was clear and evident that Allison intended to empower his attorney-in-fact with "full authority to do whatever was necessary in order to accomplish the ends of the power of attorney." With regard to this contention we must observe that the object, or purpose, of the power of attorney is not stated, there being no reference therein to any use of the power to acquire any interest in federal lands.

Assuming, arguendo, that it is necessary to construe a power of attorney, the appellant maintains the intent of the parties, in contrast to technical reasoning, should govern.

Simply stated, the issue on appeal is: whether the power of attorney Allison submitted with his application, in view of the fact that he did not personally submit a statement of citizenship and acreage holdings under his own name, was sufficient to authorize his attorney-in-fact to make or execute all statements as required by the regulations.

To facilitate the use of the public lands, ". . . Congress has enacted statutes conferring upon executive officers power to handle the administrative details, to prescribe rules and regulations . . . in order to carry out and fulfill the purposes of the statutes." Forbes v. United States, 125 F.2d 404, 408 (9th Cir. 1942). The

function of the land office is to administer the public land regulations as promulgated by the Secretary of the Interior. As stated by the Supreme Court, "if the land is available, if the applicant is qualified, and if the application appears to conform to the regulations, a lease will issue." Boesche v. Udall, 373 U.S. 472, 485 (1963).

The express statutory authority for the regulations in issue is the Mineral Leasing Act. 1/ 30 U.S.C. §§ 181 et seq. (1964). Section 189 authorizes the Secretary of the Interior ". . . to prescribe necessary and proper rules and regulations and to do any and all things necessary to carry out and accomplish the purposes of this chapter . . . ." Id. The promulgation of regulations pursuant to this authority gives the regulations the force and effect of law. Chapman v. Sheridan-Wyoming Coal Co., 172 F.2d 282, 287 (D.C. Cir. 1949), rev'd on other grounds, 338 U.S. 621, 629 (1950); McKay v. Wahlenmaier, 226 F.2d 35, 43 (D.C. Cir. 1955). The regulations supplement the statutory provisions of the law. They bind not only the applicant, but the administrator. The Supreme Court has held:

> The Secretary is bound by his own regulation so long as it remains in effect. He is also bound . . . to treat alike all violators of his regulation. He may not justify . . . his departure in a single case from an otherwise consistent policy of rejecting applications which do not conform to the regulation. McKay v. Wahlenmaier, Id.

The general rules of construction which the appellant maintains the Board should follow are not applicable in the disposition of this case. The land office did not in the literal sense construe the power of attorney. Construction denotes an "[E]xplanation of obscure or ambiguous terms . . . ." Black's Law Dictionary 386 (4th ed. 1951). There are no obscure or ambiguous terms in the power of attorney. Even a cursory examination of the power of attorney which accompanied the application reveals that there were no specific provisions which complied with the regulations. The power of attorney did not specifically authorize the attorney-in-fact to make statements as to the applicant's citizenship and acreage holdings or to execute all statements as required by the regulations.

1/ Although the specific provisions for the issuance of sulphur prospecting permits, 30 U.S.C. §§ 271276 (1964), were not enacted as a part of the Mineral Leasing Act, the general provisions of the Mineral Leasing Act are applicable. See 30 U.S.C. § 275 (1964).

The broad language of the power of attorney empowers the attorney-in-fact to exercise general authority on behalf of his principal, and implicit in its terms is the authority to execute statements regarding the principal's acreage holdings and citizenship. Were it not for the requirements of 43 CFR 3502.6-1(a) we would hold that the power of attorney is adequate. But the regulation contemplates just such an instrument as the one in question and the Secretary, in promulgating the regulation, determined that an implicit authority would not suffice. He expressly required that the authority be explicit--that it specifically state the power to execute such statements. To hold that the implied authority contained in the instrument in question is sufficient to reverse the land office decision would be to deny the clear meaning, intent and authority of the regulations, which we cannot do. Regardless of what appellant intended, the plain and obvious provisions of the regulations must control. An application which does not comply with the mandatory provisions of the regulations must be rejected. George N. Keyston, Jr., Ltd., 70 I.D. 156 (1963); Love Enterprises, 1 IBLA 248 (1971); Pan Ocean Oil Corporation, 2 IBLA 157 (1971); Leonard v. Chew, 2 IBLA 233 (1971). Allison's offer clearly did not comply with the regulations and was properly rejected.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior (211 DM 13.5; 35 F.R. 12081), the decision appealed from is affirmed.

Edward W. Stuebing, Member

We concur:

Anne Poindexter Lewis, Member

Frederick Fishman, Member